

1 (L) If the contract provides for a cost-share grant that exceeds the following
2 applicable amount, an agreement that the contract runs with the land and is binding on
3 subsequent owners or users of the land for the period of time required under subch. VIII:

4 1. \$10,000 if the cost-share contract is signed prior to prior to January 1, 2005.

5 2. \$12,000 if the cost-share contract is signed on or after January 1, 2005, but
6 before January 1, 2010.

7 3. \$14,000 if the cost-share contract is signed on or after January 1, 2010.

8
9 **NOTE:** Subsection (14) requires the county or landowner to record, with the
10 county register of deeds, any cost-share contract over the applicable
11 amount in par. (L). The county may include, in the cost-share contract, a
12 provision requiring the landowner to record the cost-share contract with
13 the register of deeds.

14
15 (m) Provisions authorizing the county land conservation committee to stop work
16 or withhold cost-share grant payments if the committee finds that the landowner has
17 breached the contract.

18 (n) An agreement that the county land conservation committee must pre-approve,
19 according to a procedure specified in the contract, any construction changes that may
20 affect the terms or amount of the cost-share grant.

21 (o) Other terms or conditions specified by the county land conservation
22 committee.

23 **NOTE:** The department will provide sample cost-share contracts to each county
24 land conservation committee. County land conservation committees are
25 encouraged to use the contract forms provided by the department.

26
27 (10) DESIGN AND INSTALLATION. A cost-shared practice shall be all of the
28 following:

29 (a) Designed and installed according to subch. VIII and the cost-share contract.

1 (b) Installed in compliance with applicable construction site erosion control
2 standards contained in the DNR Wisconsin construction site best management practice
3 handbook, DNR Pub. WR-222 (April 1994).

4 **NOTE:** Copies of the DNR construction site best management practice handbook
5 are on file at the department, DNR, the secretary of state and the revisor of
6 statutes. You may purchase copies from the Wisconsin department of
7 administration, division of document sales.
8

9 (11) PAYMENT CONDITIONS MET. Before a county land conservation committee
10 pays for any cost-shared practice, or requests any cost-share reimbursement from the
11 department under s. ATCP 50.34(3), the committee shall document all of the following:

12 (a) That the landowner has made, for that cost-shared practice, all payments for
13 which the landowner is responsible under the cost-share contract.

14 (b) That the cost-shared practice is designed and installed according to sub. (10).
15 If the cost-shared practice is an agricultural engineering practice identified under s.
16 ATCP 50.46(2), one of the following shall certify in writing that the practice complies
17 with sub. (10):

- 18 1. A professional engineer registered under ch. 443, Stats.
- 19 2. An agricultural engineering practitioner certified under s. ATCP 50.46.
- 20 3. A well driller or pump installer registered under s. 280.15, Stats., if the

21 agricultural engineering practice consists of well construction or decommissioning.

22 (c) That the landowner's nutrient management plan complies with s. ATCP
23 50.04(3), if the cost-shared practice includes a nutrient management plan.

24 (12) PARTIAL PAYMENTS. A county land conservation committee may make
25 partial payments for completed portions of a cost-shared practice if all of the following
26 apply:

1 (a) The committee documents, for that completed portion, the information
2 required under sub. (11).

3 (b) The completed portion provides independent conservation benefits.

4 (c) The committee distributes no more than 90 percent of the total cost-share
5 grant in partial payments.

6 (13) PAYMENT RECIPIENTS. A county land conservation committee shall make
7 cost-share payments to the contracting landowner, except that the committee may do any
8 of the following:

9 (a) Make cost-share payments by multi-party check payable to the landowner and
10 any contractors who designed or installed a cost-shared practice for the landowner, if the
11 landowner or any of the contractors asks the committee to do so.

12 (b) Make a cost-share payment to an assignee whom the landowner designates in
13 writing.

14 (14) RECORDING CONTRACTS WITH REGISTER OF DEEDS. If a county contract with
15 a landowner exceeds the following applicable amount, the county or the landowner shall
16 record the contract with the county register of deeds before the county makes any cost-
17 share payment to the landowner:

18 (a) \$10,000 if the cost-share contract is signed prior to January 1, 2005.

19 (b) \$12,000 if the cost-share contract is signed on or after January 1, 2005, but
20 before January 1, 2010.

21 (c) \$14,000 if the cost-share contract is signed on or after January 1, 2010.

1 (15) LANDOWNER INSTALLATION AND MAINTENANCE. (a) With the approval of
2 the county land conservation committee, a landowner may personally install a cost-shared
3 practice. The committee may give its approval if all of the following apply:

- 4 1. The landowner is competent to install the practice.
- 5 2. The landowner can install the practice at least as cheaply as other available
6 contractors.
- 7 3. The landowner submits a qualified bid if the committee requires bidding under
8 sub. (16)(b).

9 (b) If the value of a landowner's installation or maintenance service is considered
10 for cost-sharing purposes, the landowner shall submit a detailed invoice or cost-estimate
11 for those services.

12 (16) COST CONTAINMENT. A county land conservation committee shall adopt one
13 or more of the following cost containment procedures, or other procedures that are
14 equally effective, when estimating and paying for a cost-shared practice:

15 (a) The committee may base cost-share grants on typical or maximum acceptable
16 costs for the conservation practice, even if actual costs are higher.

17 **NOTE:** A committee may estimate typical costs per completed practice, or per
18 unit of labor or materials. A committee may use its own experience, or
19 information obtained from the department or other sources, to estimate
20 typical costs.

21 (b) The committee may require competitive bidding, and may determine a cost-
22 share grant amount based on low bid cost, regardless of whether the contracting
23 landowner selects the low bidder. The committee may specify bidding procedures that it
24 considers appropriate. The committee shall require competitive bidding if the cost-share
25 contract may exceed \$25,000.
26

1 **NOTE:** The department suggests the following bidding procedures:
2

- 3 • The committee must show the proposed construction site to all
4 prospective bidders on the same day and at the same time.
- 5 • There must be at least 3 qualified bids.
- 6 • All bids must be sealed and delivered by a bid deadline to a location
7 specified by the committee.
- 8 • Bids must all be opened at the same time within 2 weeks after the bid
9 deadline.
- 10 • The amount of the cost-share grant is based on the lowest qualified
11 bid.
- 12 • The landowner may select a higher bidding contractor only if the
13 landowner agrees to pay the difference.
- 14 • The landowner may not select a contractor who did not bid.

15
16 (c) The committee may use its own employees or agents to design, construct or
17 install a cost-shared practice if, by doing so, it can minimize public costs related to the
18 practice. The committee may charge the staff costs to its staffing grant award under s.
19 ATCP 50.32, but not to its cost-share grant award under s. ATCP 50.34. If a county
20 reallocates staffing grant funds to a city, village, town, county drainage board, lake
21 district or tribe with the department's approval, that local government or tribe may use
22 those staffing grant funds in the same manner.

23 **NOTE:** A local government or tribe may contract with the Wisconsin
24 conservation corps or any other entity to install a cost-shared practice as
25 the agent of the local government or tribe.
26

27 (17) COMBINED GRANTS. Cost-share grants under this chapter may be combined
28 with grants from other federal, state, local and private sources. Department funds
29 allocated under this chapter may be combined with DNR funds allocated under s. 281.65
30 or 281.66, Stats., to finance up to 70% of the total cost of a project, or up to 90% in cases
31 of economic hardship under s. ATCP 50.42(4). This subsection does not limit the use of
32 cost-share funds from other sources. A cost-share grant under this chapter may not
33 reimburse a landowner for any costs that another governmental entity is also reimbursing.

1 **NOTE:** A landowner may receive grants from 2 or more governmental entities
2 related to the same project, provided that the landowner does not receive
3 duplicate reimbursement of the same costs.

4
5 (18) LAND TAKEN OUT OF AGRICULTURAL PRODUCTION; EASEMENT. A cost-share
6 contract to take land out of agricultural production may provide for a recorded easement
7 to implement the contract. The easement shall be consistent with the cost-share contract,
8 and the duration of the easement shall be consistent with the maintenance term specified
9 in the cost-share contract. Before the landowner signs the cost-share contract, the county
10 land conservation committee shall provide the landowner with the document that the
11 landowner would sign to create the proposed easement. The county land conservation
12 committee shall promptly record the easement document with the county register of
13 deeds after the landowner signs that document.

14 **NOTE:** For example, if a county land conservation committee pays a landowner
15 to keep a riparian buffer out of agricultural production for 15 years, the
16 cost-share contract may require the landowner to grant a recorded
17 easement on that riparian buffer for 15 years. If the landowner agrees to
18 keep land out of production in perpetuity (presumably in return for a
19 higher cost-share payment), the contract may require the landowner to
20 grant a perpetual easement. The county land conservation committee must
21 give the landowner a copy of the proposed easement document before the
22 landowner signs the cost-share contract.

23
24 (19) CONFLICT OF INTEREST PROHIBITED. No county employee or land
25 conservation committee member may:

26 (a) Take any official action substantially affecting a matter which the individual,
27 a member of his or her immediate family, or an organization with which the individual is
28 associated has a substantial financial interest.

29 (b) Use his or her office or position in a way that produces or assists in the
30 production of substantial benefit, direct or indirect, for the individual, one or more

1 members of the individual's immediate family either separately or together, or an
2 organization with which the individual is associated.

3 **ATCP 50.42 Maximum cost-share rates. (1) MAXIMUM COST-SHARE RATE.**

4 (a) Except as provided under pars. (b) to (e), cost-share payments funded under this
5 chapter may not exceed 70% of the total eligible costs allowed under s. ATCP 50.40(4) to
6 install and maintain the conservation practice for the period specified in the cost-share
7 contract. This paragraph does not limit the use of cost-share funds from other sources.

8 (b) The maximum cost-share rate under par. (a) is 90% if there is an economic
9 hardship under sub. (4).

10 (c) For cropping practices identified in sub. (2), a county land conservation
11 committee may pay up to the amount authorized under this subsection or sub. (2),
12 whichever is higher.

13 (d) For more than ½ acre of riparian land taken out of agricultural production to
14 install a conservation practice, a county land conservation committee may pay a qualified
15 landowner up to the CREP-equivalent amount authorized in s. ATCP 50.08(4) if that
16 amount exceeds the relevant amount authorized under this subsection.

17 (e) A county land conservation committee may provide cost-share funds, at the
18 rate authorized under this subsection, to replace a cost-shared conservation practice that
19 is damaged or destroyed by natural causes beyond the landowner's control.

20 **NOTE:** See s. ATCP 50.08 and s. 92.14(6)(gm), Stats. Paragraphs (c) and (d)
21 provide "short-cut" alternatives for determining cost-share payments in
22 some cases. These methods do not require a case-by-case computation of
23 "cost." A county is not *required* to use these alternative methods, except
24 as provided in s. ATCP 50.08(4).
25

1 (2) CROPPING PRACTICES; MAXIMUM COST-SHARE AMOUNTS. A county land
2 conservation committee may pay up to the following amounts for the installation or
3 maintenance of the following cropping practices:

- 4 (a) For contour farming, \$9 per acre per year.
- 5 (b) For cover and green manure crop, \$25 per acre per year.
- 6 (c) For strip-cropping, \$13.50 per acre per year.
- 7 (d) For field strip-cropping, \$7.50 per acre per year.
- 8 (e) For high residue management systems, no-till systems, ridge till systems and
9 mulch till systems, \$18.50 per acre per year.
- 10 (f) For conservation plantings in riparian buffers, \$100 per acre per year.
- 11 (g) For nutrient management and pesticide management, \$7.00 per acre per year.

12 **NOTE:** For example, a cost-share contract might pay a farmer up to \$36 per acre
13 to install and maintain a contour farming system for 4 years (\$9 per year).
14 The county would pay the full contract amount when the contour system
15 was installed, and the farmer would have a contract obligation to maintain
16 the system for at least 4 years.

17 (3) MAXIMUM GRANT TO RELOCATE ANIMAL FEEDING OPERATION. No cost-share
18 grant to relocate an animal feeding operation may exceed 70% of the estimated cost to
19 install a manure management system or related practices needed to resolve or prevent
20 water quality problems at the abandoned site, or 70% of the eligible relocation costs at
21 the new site, whichever site cost is less. Not more than \$5,000 of the cost-share grant
22 may be used to transport livestock from the abandoned site to the new site.

23 (4) ECONOMIC HARDSHIP. A landowner qualifies for economic hardship
24 treatment if all the following apply:
25

1 (a) A certified public accountant or accredited financial institution certifies all the
2 following to the county land conservation committee, based on a farm financial statement
3 prepared according to generally accepted accounting principles:

4 1. The landowner is unable to make the cost-share contribution normally required
5 of a landowner under sub. (1).

6 2. The landowner will be able to pay the balance of the cost to install the cost-
7 shared practice if the landowner receives cost-sharing at the economic hardship rate.

8 (b) The landowner certifies, in a sworn affidavit to the county land conservation
9 committee, that the landowner has provided to the certified public accountant or
10 accredited financial institution under par. (a) a full and true disclosure of the landowner's
11 financial condition, including a copy of the landowner's latest federal tax return. The
12 landowner shall make the affidavit on a form provided by the department.

13 (5) REVIEW OF ECONOMIC HARDSHIP DETERMINATION. The department may
14 review of an economic hardship determination under sub. (4). The landowner and the
15 person certifying the economic hardship shall make available for department inspection
16 or copying, at the department's request, documents used to support the economic
17 hardship determination. The department may invalidate a determination that fails to
18 comply with standards under sub. (4).

19 **NOTE:** The department will not copy records inspected under sub. (5) unless the
20 department contests the validity of a determination under sub. (4) based on
21 those records. If it becomes necessary for the department to copy records
22 under sub. (5), the department will seek to protect those records from
23 public disclosure.

SUBCHAPTER VI

SOIL AND WATER PROFESSIONALS

- ATCP 50.46 Agricultural engineering practitioners
- ATCP 50.48 Nutrient management planners
- ATCP 50.50 Soil testing laboratories
- ATCP 50.52 Training for county staff

1 **ATCP 50.46 Agricultural engineering practitioners.** (1) GENERAL. No
2 person, other an agricultural engineering practitioner certified under this section or a
3 professional engineer registered under ch. 443, Stats., may certify any of the following
4 for funding purposes under this chapter or ch. NR 120:

- 5 (a) That design specifications for an agricultural engineering practice under sub.
6 (2) comply with standards under this chapter or s. 281.65, Stats.

7 **NOTE:** A design certification under par. (a) typically involves the preparation or
8 approval of a design document that prescribes the installation of an
9 agricultural engineering practice. The process typically requires the
10 application of engineering principles and methods, and may include
11 several planning and design components. For example, a practitioner may
12 conduct a site inventory to gather data for the design process, may identify
13 or confirm particular water quality problems on the site, and may evaluate
14 the adequacy of the proposed practices to address those problems.

- 15 (b) That an agricultural engineering practice under sub. (2) has been installed
16 according to an approved design, and according to applicable standards and
17 specifications.

18 **NOTE:** See ss. 92.18 and 443.14(10), Stats. Registered professional engineers,
19 persons working under the direct supervision of registered professional
20 engineers, and employees of the NRCS may also seek certification under
21 this section. A state or county employee certified under this section is
22 exempt from the professional engineering registration requirements of ch.
23 443, Stats., when engaged in state or county activities under ch. 92 or s.
24 281.65, Stats., regardless of whether the activities are funded under this
25 chapter.
26
27

1 (2) AGRICULTURAL ENGINEERING PRACTICES. For purposes of this section, an
2 agricultural engineering practice includes any of the following:

- 3 (a) Access road.
- 4 (b) Animal trail or walkway.
- 5 (c) Crevice and sinkhole treatment.
- 6 (d) Closure of waste impoundments
- 7 (e) Dam.
- 8 (f) Diversion.
- 9 (g) Grade stabilization structure.
- 10 (h) Grassed waterway.
- 11 (i) Heavy use area protection.
- 12 (j) Lined waterway or outlet.
- 13 (k) Manure transfer system.
- 14 (L) Open channel.
- 15 (m) Pesticide and fertilizer mixing and loading facilities.
- 16 (n) Pipeline for livestock water supply.
- 17 (o) Pond.
- 18 (p) Pond sealing or lining.
- 19 (q) Roof runoff management.
- 20 (r) Sediment basin.
- 21 (s) Spring development.
- 22 (t) Stream channel stabilization.
- 23 (u) Streambank or shoreline protection.

- 1 (v) Subsurface drain.
- 2 (w) Surface drain; field ditch, main or lateral.
- 3 (x) Terrace.
- 4 (y) Trough or tank.
- 5 (z) Underground outlet.
- 6 (za) Waste storage facility.
- 7 (zb) Wastewater treatment strip or buffer.
- 8 (zc) Water and sediment control basin.
- 9 (zd) Water control structure.
- 10 (ze) Well construction or decommissioning. Notwithstanding sub. (1)(intro.), a
- 11 well driller or pump installer registered under s. 280.15, Stats., may certify a well
- 12 construction or decommissioning under sub. (1).
- 13 (zf) Wet detention basin.
- 14 (zg) Wetland restoration.

15 (3) AGRICULTURAL ENGINEERING PRACTITIONER; CERTIFICATION. A person who
 16 wishes to be certified as an agricultural engineering practitioner shall apply to the
 17 department or a county land conservation committee. An applicant may apply orally or
 18 in writing. The department or the county land conservation committee shall promptly
 19 refer the application to the department's designated field engineer. The field engineer
 20 shall evaluate the applicant and issue a decision granting or denying the request.

21 **NOTE:** An applicant for certification need not apply to the department's offices
 22 in Madison, but may apply directly to one of the department's field
 23 engineers. An applicant's supervisor may also forward an application to
 24 the department's field engineer.
 25

1 (4) EVALUATING APPLICANTS FOR CERTIFICATION. (a) To evaluate an applicant
2 under sub. (3), the department's field engineer shall complete the certification form
3 shown in *Appendix E*. The field engineer shall rate the applicant under sub. (5) based on
4 the applicant's demonstrated knowledge, training, experience and record of appropriately
5 seeking assistance. Evaluations shall be fair and consistent.

6 (b) To evaluate an applicant, the department's field engineer may conduct
7 interviews, perform inspections, and require answers and documentation from the
8 applicant. The field engineer may ask engineering staff from NRCS to help evaluate an
9 applicant.

10 (5) CERTIFICATION RATING. (a) For each type of agricultural engineering
11 practice identified in *Appendix E*, the department's field engineer shall identify the most
12 complex of the 5 job classes in *Appendix E* for which the applicant is authorized to do
13 each of the following:

14 1. Certify that design specifications for jobs in that class comply with standards
15 under this chapter or s. 281.65, Stats.

16 2. Certify that jobs in that class have been installed according to the approved
17 design, and according to any applicable standards and specifications.

18 **NOTE:** The rating system under par. (a) is designed to be reasonably consistent
19 with the system used by NRCS under 7 CFR 610.1 to 610.5. *Appendix E*
20 is similar to the NRCS job approval delegation form, and identifies the
21 controlling factors used to determine the relative difficulty of job classes.
22 A person who is certified at a job level under par. (a) may certify his or
23 her own work at that level for funding purposes under this chapter.

24 (b) If NRCS has previously rated an applicant under 7 CFR 610.1 to 610.5, the
25 department's field engineer shall give that applicant the same initial rating. Within 18
26

1 months after the field engineer makes the initial rating, the department's field engineer
2 shall review that rating under sub. (7).

3 (6) CERTIFICATION DECISION. (a) The department's field engineer shall act on a
4 certification application under sub. (3) within 30 days after the field engineer receives
5 that application, provided that the applicant promptly submits relevant information and
6 documentation requested by the field engineer.

7 **NOTE:** When recertifying an applicant who was previously certified by the
8 department or NRCS, the department's field engineer may raise one or
9 more rating levels, lower one or more rating levels, or reaffirm one or
10 more rating levels.

11
12 (b) Whenever the department's field engineer certifies an agricultural engineering
13 practitioner, the field engineer shall issue a written certification in the form shown in

14 *Appendix E.* The certification becomes effective when signed by all of the following:

- 15 1. The field engineer.
16 2. The practitioner certified.
17 3. The practitioner's supervisor if any.

18 (c) Whenever the department's field engineer denies a request under sub. (3) for
19 a specific certification rating, the field engineer shall issue the denial in writing and shall
20 specify the reasons for the denial.

21 (d) The department's field engineer shall retain a copy of each certification under
22 par. (b), each denial under par. (c), and any other documentation received or compiled in
23 connection with an application under sub. (3).

24 (7) REVIEWING CERTIFICATION RATINGS. (a) A department field engineer shall
25 review each certification rating under sub. (5) at least once every 3 years, and may review

1 a rating at any time. A field engineer shall review a rating whenever a certified
2 agricultural engineering practitioner requests that review.

3 (b) Based on a review under par. (a), a department field engineer shall issue a
4 new certification rating which reaffirms or modifies the prior rating under sub. (5). The
5 field engineer shall provide a copy of each new rating to the person rated. The field
6 engineer may not reduce a rating except for good cause.

7 (c) A field engineer shall document, in writing, his or her reasons for reducing a
8 certification rating under sub. (5), or for refusing to make a requested rating change. The
9 field engineer shall provide that documentation to the person rated, and to that person's
10 supervisor if any.

11 (8) APPEALS. (a) An affected person may appeal a field engineer's action under
12 sub. (5), (6) or (7). The affected person shall file his or her appeal in writing, with the
13 field engineer, within 10 business days after the applicant receives notice of the field
14 engineer's action. The appeal shall identify the specific matters in dispute and the
15 specific basis for the appeal.

16 (b) Within 15 business days after the department's field engineer receives an
17 appeal under par. (a), the field engineer shall hold an informal meeting with the appellant.
18 The meeting may include a representative of the county land conservation committee.
19 The field engineer may hold the informal meeting in person or by telephone.

20 (c) If an appeal cannot be resolved after an informal meeting under par. (b), the
21 field engineer shall forward the appeal to a department reviewer designated by the
22 administrator of the department's agricultural resource management division. The
23 reviewer shall hold an informal hearing on the appeal within 10 business days after the

1 reviewer receives the appeal, unless the applicant agrees to a later date for the informal
2 hearing. The reviewer shall hold the informal hearing by telephone or at a location
3 determined by the reviewer. Within 10 business days after the conclusion of the informal
4 hearing, the reviewer shall issue a written decision which affirms, reverses or modifies
5 the field engineer's action. The reviewer shall provide a copy of his or her written
6 decision to the applicant. The decision shall include a notice of the applicant's right to
7 request a contested case hearing under par. (d).

8 (d) If an applicant disputes the reviewer's decision under par. (c), the applicant
9 may file a request with the department under s. 227.42, Stats., for a contested case
10 hearing under ch. 227, Stats., and ch. ATCP 1.

11 (9) SUSPENDING OR REVOKING CERTIFICATION. (a) The department may, for
12 cause, suspend or revoke a certification under this section. The department may
13 summarily suspend a certification, without prior notice or hearing, if the department
14 makes a written finding that the summary suspension is necessary to prevent an imminent
15 threat to the public health, safety or welfare.

16 (b) An order suspending or revoking a certification shall be signed by the
17 secretary or the secretary's designee. Proceedings to suspend or revoke a certificate shall
18 be conducted according to ch. 227, Stats., and ch. ATCP 1.

19 **NOTE:** See ss. 92.18(6) and 93.06(7), Stats.

20 (c) The department shall notify all of the following persons of any suspension or
21 revocation under this subsection:

22 1. Any land conservation committee or state agency that employs the individual
23 whose certification is suspended or revoked.

1 2. State and federal agencies that provide cost-share funds for agricultural
2 engineering practices.

3 (d) The reduction of a certification rating under sub. (7) does not constitute a
4 suspension or revocation under this subsection.

5 (10) CERTIFICATION GUIDELINES. The department may publish guidelines for the
6 certification of agricultural engineering practitioners under this section. The guidelines
7 may include suggested courses, training activities, and types of knowledge and
8 experience that may help applicants qualify for certification at specified rating levels.

9 (11) SIGNATURE AND DATE REQUIRED. Whenever a person certified under this
10 section approves or submits for approval any document related to the design or
11 construction of an agricultural engineering practice under sub. (2), that person shall sign
12 and date that document.

13 (12) SCOPE OF CERTIFICATION. No certified agricultural engineering practitioner
14 may, for funding purposes under this chapter or s. 281.65, Stats., certify any matter under
15 sub. (5)(a) in a job class more complex than that for which the practitioner is authorized
16 under sub. (5)(a).

17 **ATCP 50.48 Nutrient management planners.** (1) QUALIFICATIONS. To be
18 qualified under ss. 281.65, 281.66, Stats., and this chapter, a nutrient management
19 planner shall be knowledgeable and competent in all of the following areas:

20 (a) Compliance with the NRCS technical guide.

21 (b) Soil testing.

22 (c) Calculating nutrient needs on a field-by-field basis.

1 (d) Crediting manure, residual legume nitrogen and other nutrient sources on a
2 field-by-field basis.

3 (e) Using conservation plans.

4 (f) Relevant laws related to nutrient management.

5 (g) Preparing nutrient management plans according to s. ATCP 50.04(3).

6 (2) PLANNERS PRESUMPTIVELY QUALIFIED. An individual is considered a
7 qualified nutrient planner under sub. (1), without any action by the department, if all of
8 the following apply:

9 (a) The individual is at least one of the following:

10 1. Recognized as a certified professional crop consultant by the national alliance
11 of independent crop consultants.

12 2. Recognized as a certified crop advisor by the American society of agronomy,
13 Wisconsin certified crop advisors board.

14 3. Registered as a crop scientist, crop specialist, soil scientist, soil specialist or
15 professional agronomist in the American registry of certified professionals in agronomy,
16 crops and soils.

17 4. The holder of other credentials that the department deems equivalent to those
18 specified under subds. 1. to 3. A landowner is presumptively qualified to prepare a
19 nutrient management plan for his or her farm, but not for others, if the landowner
20 completes a department-approved training course and the course instructor approves the
21 landowner's first annual plan. The landowner shall complete a department-approved
22 training course at least once every 4 years to maintain his or her presumptive
23 qualification.

1 (b) The nutrient management planner complies with sub. (3).

2 (c) The department has not disqualified the nutrient management planner under

3 sub. (4).

4 **NOTE:** The department does not affirmatively certify nutrient management
5 planners. A nutrient management planner who meets all of the
6 requirements under sub. (2) may represent himself or herself as a qualified
7 nutrient planner, without any certificate from the department. A person
8 qualified only to prepare his or her own nutrient management plan under
9 sub. (2)(a)4. may not misrepresent that he or she is qualified to prepare
10 nutrient management plans for others.

11
12 (3) NUTRIENT MANAGEMENT PLANS. (a) A qualified nutrient management

13 planner shall prepare nutrient management plans according to s. ATCP 50.04(3).

14 (b) A qualified nutrient management planner may not approve a nutrient

15 management plan that fails to comply with s. ATCP 50.04(3).

16 (4) DISQUALIFICATION. The department may issue a written notice to an

17 individual, declaring that the individual is not a qualified nutrient management planner

18 under this section. The notice shall specify the basis for the department's declaration.

19 The department may disqualify a nutrient management planner if the planner violates

20 sub. (3) or lacks qualifications required under sub. (1).

21 **NOTE:** A person who is named in a disqualification notice under sub. (4) may
22 request a contested case hearing under s. 227.42, Stats., and ch. ATCP 1.

23
24 (5) MISREPRESENTING QUALIFICATION. No person may do any of the following,

25 directly or by implication:

26 (a) Misrepresent that an individual is a qualified nutrient management planner

27 under this section.

28 (b) Represent, contrary to a valid written notice under sub. (4), that an individual

29 is a qualified nutrient management planner under this section.

1 (c) Misrepresent that a person is qualified to perform nutrient management plans
2 for others, if that is not the case.

3 (6) RECORDS. A qualified nutrient management planner shall keep copies of all
4 nutrient management plans that the planner prepares or approves for funding under s.
5 281.65 or 281.66, Stats., or this chapter. The planner shall retain the records for at least 4
6 years, and shall make them available for inspection and copying by the department upon
7 request.

8 **ATCP 50.50 Soil testing laboratories.** (1) CERTIFIED LABORATORY. A nutrient
9 management plan shall be based on soil tests conducted at the university of Wisconsin or
10 another soil testing laboratory certified by the department. The department may certify a
11 laboratory according to this section.

12 **NOTE:** Subsection (1) does not prohibit an uncertified laboratory from
13 performing soil tests. However, a nutrient management plan does not
14 comply with this chapter if it is based on soil tests performed by an
15 uncertified laboratory.

16 (2) APPLYING FOR CERTIFICATION. A laboratory operator may apply to the
17 department for certification under sub. (1). The operator shall apply on a form provided
18 by the department. The application shall include all of the following:

- 19 (a) The name of the laboratory operator.
- 20 (b) The address of every laboratory in this state for which the operator seeks
21 certification.
- 22 (c) The name and telephone number of the individual who is responsible for on-
23 site administration of each laboratory under par. (b).
- 24 (d) The soil tests, test methods, and nitrogen estimation methods used by the
25 laboratory. The laboratory shall be capable of performing the following tests according
26

1 to methods prescribed by the university of Wisconsin-extension in *Soil Test*
2 *Recommendations for Field, Vegetable and Fruit Crops*, UWEX Publication A2809
3 (1998), and shall be capable of estimating nitrogen levels based on those tests:

- 4 1. Soil pH.
- 5 2. Buffer pH (SMP).
- 6 3. Phosphorus (P).
- 7 4. Potassium (K).
- 8 5. Organic matter (OM).

9 (e) Documentation showing that the laboratory is qualified and equipped to
10 perform accurate soil tests and nitrogen estimates under par. (d).

11 (f) An agreement to comply with subs. (4) to (6).

12 (g) Other relevant information required by the department.

13 (3) ACTION ON CERTIFICATION REQUEST. The department shall grant or deny a
14 certification request under sub. (2) within 30 days after the department receives a
15 complete request. The department may grant a certification request based on information
16 provided under sub. (2). A certification is nontransferable. A certification remains in
17 effect until withdrawn by the department.

18 (4) NUTRIENT RECOMMENDATIONS. If a certified laboratory recommends nutrient
19 applications to a landowner that exceed the amounts required to achieve applicable crop
20 fertility levels recommended by the university of Wisconsin-extension in *Soil Test*
21 *Recommendations for Field, Vegetable and Fruit Crops*, UWEX publication A-2809
22 (1998), the laboratory shall make those recommendations in writing and shall disclose all
23 of the following in the same document:

- 1 (a) The landowner's name and address:
- 2 (b) The nutrient application amounts required to achieve applicable crop fertility
- 3 levels recommended by the university of Wisconsin-extension. The laboratory shall
- 4 disclose these amounts so the landowner can easily compare them with the laboratory's
- 5 recommended amounts.
- 6 (c) The following statement, clearly and conspicuously printed adjacent to the
- 7 laboratory's recommended nutrient applications:

8 **IMPORTANT NOTICE**

9 **Our recommended nutrient applications exceed the amounts required to achieve**

10 **applicable crop fertility levels recommended by the University of Wisconsin. The**

11 **amounts required to achieve the UW's recommended crop fertility levels are shown**

12 **for comparison. Excessive nutrient applications may increase your costs, and may**

13 **cause surface water and groundwater pollution. If you apply nutrients at the rates**

14 **we recommend, you will not comply with state soil and water conservation**

15 **standards. You may contact your county land conservation committee for more**

16 **information.**

17

18 *NOTE:* Appendix B contains a convenient summary of UWEX publication A-

19 2809, for selected crops. You may obtain the complete publication and

20 the summary from your county extension agent. The complete publication

21 is also on file with the department, the secretary of state and the revisor of

22 statutes.

23

24 (5) RECORDS. A certified soil testing laboratory shall keep records of all of the

25 following for at least 4 years, and shall make those records available for inspection and

26 copying by the department upon request:

- 27 (a) Records of all soil tests conducted at the laboratory.
- 28 (b) Copies of all nutrient application recommendations made by the laboratory.

29 (6) LABORATORY EVALUATION. (a) The department or its agent may review the

30 performance of a soil testing laboratory certified under this section. The department or

31 its agent may do any of the following as part of its review:

- 1 1. Review relevant laboratory records.
- 2 2. Evaluate laboratory facilities and methods.
- 3 3. Evaluate the proficiency of laboratory analysts.
- 4 4. Evaluate the laboratory's proficiency in testing check samples provided by the
- 5 department or its agent.

6 (b) A laboratory operator shall cooperate with a reasonable review under par. (a).

7 (7) DENYING OR WITHDRAWING CERTIFICATION. (a) The department may deny,
8 suspend, revoke or impose conditions on a certification under this section if the
9 department finds that the laboratory has done any of the following:

- 10 1. Failed to submit a complete application under sub. (2).
- 11 2. Failed to perform soil tests with reasonable accuracy.
- 12 3. Failed to comply with applicable requirements under this section.
- 13 4. Falsified relevant information.

14 (b) If the department denies, suspends, revokes or imposes conditions on a
15 laboratory certification, the department shall give the laboratory operator written notice
16 of the department's reasons for that action.

17 **NOTE:** A laboratory operator may request a hearing, pursuant to s. 227.42,
18 Stats., and ch. ATCP 1, on the department's action under sub. (7).

19
20 **ATCP 50.52 Training for county staff. (1) ROLE OF THE DEPARTMENT.** The
21 department, in consultation with the county land conservation committees and the
22 training advisory committee appointed under sub. (2), may do any of the following to
23 ensure adequate training of county land conservation committee staff who administer
24 programs under this chapter or s. 281.65, Stats.:

- 25 (a) Determine training needs and priorities.

- 1 (b) Identify training opportunities and resources.
- 2 (c) Make training recommendations.
- 3 (d) Approve training programs funded under this chapter.
- 4 (e) Coordinate the delivery of training.
- 5 (f) Provide training and assess fees to cover training costs.

6 **NOTE:** The department may exempt county land conservation committee staff
7 from fees that the department charges for training programs provided by
8 the department.

- 9
- 10 (g) Issue training guidelines for certified agricultural engineering practitioners
11 under s. ATCP 50.46(10).

12 **NOTE:** The department guidelines may include suggested courses, training
13 activities, and the types of knowledge and experience that may help
14 applicants qualify for certification at specified rating levels.

- 15
- 16 (h) Distribute training funds to counties under s. ATCP 50.32.

17 (2) TRAINING ADVISORY COMMITTEE. The department shall appoint a training
18 advisory committee to advise the department on training activities under sub. (1). The
19 committee shall include representatives of all of the following:

- 20 (a) DNR.
- 21 (b) NRCS.
- 22 (c) The university of Wisconsin-extension.
- 23 (d) The statewide association of land conservation committees.
- 24 (e) The statewide association of land conservation committee staff.

SUBCHAPTER VII

LOCAL REGULATIONS

- ATCP 50.54 Local regulations; general
- ATCP 50.56 Manure storage systems; ordinance
- ATCP 50.58 Shoreland management; ordinance
- ATCP 50.60 Livestock operations; local regulation

1 **ATCP 50.54 Local regulations; general.** (1) REVIEW OF LOCAL REGULATIONS.

2 The department may review and comment on local regulations.

3 **NOTE:** "Local regulations" are defined in s. ATCP 50.01(18). Local
4 conservation requirements should be consistent with this chapter (see ss.
5 92.05(1), (3)(c) and (3)(L), 92.07(2), 92.105(1), 92.11, 92.15(2) to (4),
6 92.16, 92.17 and 281.16(3), Stats.). The department may review and
7 comment on local regulations, as it deems necessary. See specific
8 requirements related to manure storage ordinances (ATCP 50.56),
9 agricultural shoreland management ordinances (ATCP 50.58) and
10 livestock ordinances (ATCP 50.60).

11 (2) COST-SHARING REQUIRED. (a) No county, local government or tribe
12 receiving funds under this chapter may do any of the following, under this chapter or a
13 local regulation, unless that county, local government or tribe first offers cost-sharing that
14 is at least equal to the cost-sharing required under s. ATCP 50.08:

15 1. Require a conservation practice that discontinues or modifies cropping
16 practices on existing cropland. In this paragraph, "existing cropland" has the meaning
17 given in NR 151.09(4)(b).

18 2. Require a conservation practice that discontinues or modifies an existing
19 livestock facility or operation. In this paragraph, "existing livestock facility or operation"
20 has the meaning given in NR 151.095(5)(b).

21 (b) Paragraph (a) does not apply to a nutrient management plan required under a
22 permit for a manure storage system voluntarily constructed by a landowner.
23

1 (c) Paragraph (a) does not limit any of the following:

2 1. Emergency or interim action taken in response to a pollution discharge, to

3 prevent or mitigate imminent harm to waters of the state.

4 2. County action under s. ATCP 50.16(6) to suspend a landowner's eligibility for
5 farmland preservation tax credits, if the landowner fails to comply with conservation
6 standards under s. ATCP 50.16(1).

7 3. Enforcement of an existing cost-share contract.

8 **ATCP 50.56 Manure storage systems; ordinance.** (1) GENERAL. A county,
9 city, village or town may adopt an ordinance under s. 92.16, Stats., that establishes
10 standards for manure storage systems.

11 (2) CONTENTS. An ordinance adopted under s. 92.16, Stats., shall include all of
12 the following:

13 (a) The authority of the county, city, village or town to adopt the ordinance.

14 (b) The purpose for the ordinance, and the findings that prompted the county,
15 city, village or town to adopt the ordinance.

16 (c) Definitions of significant terms used in the ordinance.

17 **NOTE:** Section ATCP 50.62(1) includes relevant definitions that may be used in
18 a manure storage ordinance.

19 (d) Construction provisions under sub. (3).

20 (e) Abandonment provisions under sub. (4), if any.

21 (f) Conditions, if any, under which the county, city, village or town may require
22 the abandonment of a manure storage system.

23 (g) Provisions, if any, for monitoring the adequacy of manure storage systems,
24 including the adequacy of related nutrient management practices.
25

1 **NOTE:** The monitoring system may be applied to all manure storage systems,
2 regardless of when those systems were installed.

3
4 (h) Provisions related to ordinance administration, including inspection and
5 enforcement authority, appeal procedures, and penalties for violating the ordinance.

6 (i) Provisions, if any, related to the initial applicability and severability of the
7 ordinance.

8 (j) The effective date of the ordinance.

9 (3) **CONSTRUCTION PROVISIONS.** An ordinance adopted under s. 92.16, Stats.,
10 shall prohibit any person from constructing a manure storage system unless that person
11 does all of the following:

12 (a) Obtains a permit from the county, city, village or town that adopts the
13 ordinance.

14 (b) Develops a nutrient management plan that complies with s. ATCP 50.04(3).

15 **NOTE:** A nutrient management plan, demonstrating that manure can be properly
16 utilized, should be included with a permit application under par. (a). If the
17 county, city, village or town wants to monitor compliance with the
18 nutrient management plan, its ordinance may include monitoring
19 provisions under sub. (2)(g).

20
21 (c) Complies with all of the following standards:

22 1. NRCS technical guide waste storage facility standard 313.

23 2. NRCS technical guide manure transfer standard 634.

24 3. Applicable DNR requirements under s. 281.65(4)(g)5., Stats.

25 (4) **ABANDONMENT PROVISIONS.** An ordinance adopted under s. 92.16, Stats.,
26 may prohibit any person from abandoning a manure storage system unless that person
27 does all of the following:

1 (a) Submits an abandonment plan for approval by the county, city, village or
2 town. The abandonment plan shall comply with the waste facility closure provisions
3 contained in the NRCS technical guide, closure of waste impoundments standard 360.

4 (b) Obtains a permit for the abandonment.

5 (c) Complies with the approved abandonment plan under par. (a).

6 **NOTE:** An ordinance may apply the abandonment requirements under sub. (4) to
7 any manure storage system, regardless of when that system was installed.
8

9 (5) COUNTY REVIEW. Before a county, city, village or town adopts or amends a
10 manure storage ordinance under s. 92.16, Stats., the county, city, village or town shall
11 refer the proposed ordinance or amendment to the county land conservation committee
12 and the county planning and zoning agency for review and comment.

13 (6) DEPARTMENT REVIEW. Before a county, city, village or town adopts or
14 amends an ordinance under s. 92.16, Stats., the county, city, village or town shall submit
15 the ordinance to the department. The department shall review the ordinance for
16 consistency with this chapter. The department may ask the county, city, village or town
17 for information that it needs to perform the review.

18 **NOTE:** See s. 92.05(3)(L), Stats.

19 **ATCP 50.58 Shoreland management; ordinance.** (1) GENERAL. A county,
20 city, village or town may adopt or amend a shoreland management ordinance under s.
21 92.17, Stats., with department approval.

22 **NOTE:** This subsection does not limit the authority of a county, city, village or
23 town to adopt a shoreland management ordinance under other applicable
24 law.
25

26 (2) CONTENTS. An ordinance adopted under s. 92.17, Stats., shall include all of
27 the following provisions:

- 1 (a) The authority of the county, city, village or town to adopt the ordinance.
- 2 (b) The purpose for the ordinance, and the findings that prompted the county,
3 city, village or town to adopt the ordinance.
- 4 (c) Definitions of significant terms used in the ordinance.
- 5 (d) A description of the activities and geographical areas regulated under the
6 ordinance, including maps of the areas at a scale of 1:24,000 (one inch per 2,000 feet) or
7 larger.
- 8 (e) Soil and water resource management practices or compliance standards
9 required under the ordinance.
- 10 (f) Procedures for developing and approving conservation plans, if required under
11 the ordinance.
- 12 (g) Provisions related to ordinance administration, including inspection and
13 enforcement authority, appeal procedures, and penalties for violating the ordinance.
- 14 (h) Provisions, if any, related to the initial applicability and severability of the
15 ordinance.
- 16 (i) The effective date of the ordinance.

17 (3) COUNTY REVIEW. Before a county, city, village or town adopts or amends a
18 shoreland management ordinance under 92.17, Stats., the county, city, village or town
19 shall refer the proposed ordinance or amendment to the county land conservation
20 committee and the county planning and zoning agency for review and comment.

21 (4) DEPARTMENT APPROVAL. (a) A county, city, village or town may submit a
22 proposed ordinance or amendment for department approval under sub. (1). Except as

1 provided in par. (c), the county, city, village or town shall submit all of the following
2 with the proposed ordinance or amendment:

- 3 1. County comments under sub. (3), if any.
- 4 2. A description of any public hearings held on the proposal, and a brief summary
5 of hearing comments if any.
- 6 3. A statement, by an attorney authorized to practice law in this state, saying that
7 the attorney has reviewed the ordinance or amendment for compliance with applicable
8 law under chs. 59 to 68, Stats.

9 (b) Except as provided in par. (c), the department shall consult with DNR and the
10 LWCB before approving a proposed ordinance or amendment under sub. (1). The
11 department may approve a proposed ordinance or amendment subject to conditions
12 specified by the department. If the department disapproves a proposed ordinance or
13 amendment, it shall give written notice specifying its reasons.

14 **NOTE:** DNR reviews shoreland management ordinances and amendments to
15 determine whether they conflict with shoreland and shoreland-wetland
16 zoning rules administered by the DNR under chs. NR 115 and 117.

17
18 (c) The department may approve a proposed ordinance amendment without
19 consulting DNR or the LWCB, and without reviewing any information under par. (a), if
20 the department finds that the amendment involves no significant legal or policy issues.

21 (d) The department may approve a shoreland management ordinance or
22 amendment proposed under s. 92.17, Stats., if the department finds that the ordinance or
23 amendment is consistent with this chapter and conforms to guidelines adopted by the
24 department under s. 92.17, Stats.

1 (e) Whenever a county, city, village or town adopts a shoreland management
2 ordinance under s. 92.17, Stats., the county, city, village or town shall file a certified copy
3 of the adopted ordinance with the department.

4 **ATCP 50.60 Livestock operations; local regulation.** (1) LOCAL REGULATIONS
5 THAT EXCEED STATE STANDARDS; APPROVAL REQUIRED. (a) Except as provided in par.
6 (b), no local regulation may require nutrient management or other conservation practices
7 for livestock operations that exceed the practices required under s. ATCP 50.04 unless
8 the department or DNR approves those requirements under this section or NR 151.096.

9 **NOTE:** See s. 92.15, Stats. A person adversely affected by a local livestock
10 regulation may oppose its adoption at the local level. The person may also
11 challenge a local regulation in court if the person believes that the local
12 governmental unit has violated par. (a) or s. 92.15, Stats. A local
13 governmental unit is responsible for analyzing the legal adequacy of its
14 regulations, and may exercise its own legal judgment in deciding whether
15 to seek state approval under this section.

16
17 A local permit requirement does not, *by itself*, violate par. (a). But permit
18 conditions codified in a local regulation must comply with par. (a). If a
19 local governmental unit routinely requires permit holders to comply with
20 uncodified conservation requirements that exceed state standards, those
21 uncodified requirements may be subject to court challenge under s. 92.15,
22 Stats., and par. (a) as *de facto* regulatory enactments. A local
23 governmental unit may forestall a legal challenge by codifying standard
24 permit conditions and obtaining any necessary state approval under this
25 section. The department will review codified regulations under sub. (2),
26 but will not review individual permits or uncodified permit conditions.

27
28 (b) Paragraph (a) does not apply to any of the following:

29
30 1. Local regulation of cropping practices that are not directly related to a
31 livestock operation.

32 2. Local regulations enacted prior to *[...revisor inserts effective date of this*
33 *recreated chapter...]*. This does not limit the application of s. 92.15, Stats., to those local
34 regulations.

1 (2) DEPARTMENT APPROVAL. (a) To obtain department approval under sub.
2 (1)(a) for an existing or proposed regulation, the head of the local governmental unit or
3 the chair of the local governmental unit's governing board shall do all the following:

4 1. Submit a copy of the regulation to the department and DNR.

5 2. Identify the provisions of the regulation for which the local governmental unit
6 seeks approval.

7 3. Submit documentation showing why the identified provisions are needed to
8 achieve compliance with water quality standards, and why compliance cannot be
9 achieved by less stringent provisions.

10 (b) Within 90 days after the department receives a complete application under
11 par. (a), the department shall grant or deny the requested approval. Before the
12 department grants or denies the application, the department shall solicit a
13 recommendation from DNR. The department shall issue its decision in writing, and shall
14 state the reasons for its decision.

15 **NOTE:** The department may identify other concerns related to a proposed
16 ordinance, but will not formally approve or disapprove any ordinance
17 provisions other than those identified by the local governmental unit under
18 par. (a)2. The department does not assume responsibility for the
19 affirmative review and approval of every provision of every local
20 regulation.

21 (c) The department may approve a provision identified under par. (a)2. if the
22 department finds that the provision is necessary to achieve compliance with water quality
23 standards under s. 281.15, Stats., and that compliance cannot reasonably be achieved by
24 less restrictive means.

25 (d) The department may not review or approve individual permits or permit
26 conditions under this subsection, except that the department may review standard permit
27

- 1 conditions that are codified in a local regulation. The department may approve those
- 2 codified conditions if they meet the standard for approval under par. (c).

SUBCHAPTER VIII

STANDARDS FOR COST-SHARED PRACTICES

- 1 ATCP 50.61 General standards for cost-shared practices
- 2 ATCP 50.62 Manure storage systems
- 3 ATCP 50.63 Manure storage system closure
- 4 ATCP 50.64 Barnyard runoff control systems
- 5 ATCP 50.65 Access roads and cattle crossings
- 6 ATCP 50.66 Animal trails and walkways
- 7 ATCP 50.67 Contour farming
- 8 ATCP 50.68 Cover and green manure crop
- 9 ATCP 50.69 Critical area stabilization
- 10 ATCP 50.70 Diversions
- 11 ATCP 50.71 Field windbreaks
- 12 ATCP 50.72 Filter strips
- 13 ATCP 50.73 Grade stabilization structures
- 14 ATCP 50.74 Heavy use area protection
- 15 ATCP 50.75 Livestock fencing
- 16 ATCP 50.76 Livestock watering facilities
- 17 ATCP 50.77 Milking center waste control systems
- 18 ATCP 50.78 Nutrient management
- 19 ATCP 50.79 Pesticide management
- 20 ATCP 50.80 Prescribed grazing
- 21 ATCP 50.81 Relocating or abandoning animal feeding operations
- 22 ATCP 50.82 Residue management
- 23 ATCP 50.83 Riparian buffers
- 24 ATCP 50.84 Roofs
- 25 ATCP 50.85 Roof runoff systems
- 26 ATCP 50.86 Sediment basins
- 27 ATCP 50.87 Sinkhole treatment
- 28 ATCP 50.88 Streambank and shoreline protection
- 29 ATCP 50.89 Strip-cropping
- 30 ATCP 50.90 Subsurface drains
- 31 ATCP 50.91 Terrace systems
- 32 ATCP 50.92 Underground outlets
- 33 ATCP 50.93 Waste transfer systems
- 34 ATCP 50.94 Wastewater treatment strips
- 35 ATCP 50.95 Water and sediment control basins
- 36 ATCP 50.96 Waterway systems
- 37 ATCP 50.97 Well decommissioning
- 38 ATCP 50.98 Wetland development or restoration

39

1 **ATCP 50.61 General standards for cost-shared practices. (1) COST-SHARED**

2 PRACTICES MUST COMPLY: Cost-shared practices under this chapter shall comply with
3 applicable standards under this subchapter.

4 **(2) STANDARDS ADOPTED BY RULE:** The department may not adopt, amend or
5 repeal standards under this subchapter, except by rule.

6 **NOTE:** Before the department adopts, amends or repeals a standard by rule, the
7 department will consider the recommendations of the standards oversight
8 council, a voluntary multi-agency council that works to share technical
9 information and coordinate technical standards among participating
10 agencies. Before the department adopts, amends or repeals a standard by
11 rule, the department must normally do all of the following (see s. 15.13,
12 Stats., and ch. 227, Stats.):

- 14 • Submit proposed rules to the land and water conservation board for
15 review and comment.
- 16 • Hold public hearings.
- 17 • Obtain the approval of the board of agriculture, trade and
18 consumer protection.
- 19 • Submit the final draft rule for legislative committee review.
- 20 • Obtain the approval of the attorney general and the revisor of
21 statutes, if the department proposes to incorporate technical
22 publications by reference in the rule. The department must make
23 copies of the technical publications available for public inspection,
24 and must file copies with the attorney general, the revisor of
25 statutes and the secretary of state.
- 26 • Prepare a fiscal estimate that discusses the financial impact of the
27 rule on state and local government.
- 28 • Prepare a small business analysis that discusses the impact of the
29 rule on small businesses (including farmers).
- 30 • File the rule with the secretary of state.
- 31 • File the rule with the revisor of statutes, for publication in the
32 Wisconsin administrative register and the Wisconsin
33 administrative code.

34 **ATCP 50.62 Manure storage systems. (1) DEFINITIONS. In this section:**

36 (a) “Animal feeding operation” means a feedlot or facility, other than a pasture,
37 where animals are fed, confined, maintained or stabled for 45 days or more in any 12-

1 month period. Two or more animal feeding operations under common ownership or
2 management constitute a single animal feeding operation if any of the following apply:

- 3 1. The operations are adjacent.
- 4 2. The operations use common plans, acreage or systems to landspread manure or
5 other wastes.
- 6 3. Manure, barnyard runoff or other wastes are commingled in a common storage
7 facility prior to landspreading.

8 (b) "Manure management system" means a system of one or more practices,
9 facilities, techniques or measures used to prevent or reduce pollutants associated with
10 manure. A "manure management system" may include one or more of the following:

- 11 1. A manure storage system.
- 12 2. A barnyard runoff control system as defined in s. ATCP 50.64(1).
- 13 3. Nutrient management as defined in s. ATCP 50.78(1).
- 14 4. Manure storage system closure as defined in s. ATCP 50.63(1)(b).
- 15 5. Well abandonment as described in ch. NR 812.

16 (c) "Manure storage facility" means one or more manure storage structures.
17 "Manure storage facility" includes stationary equipment and piping used to load or
18 unload a manure storage structure if the equipment is specifically designed for that
19 purpose and is an integral part of the facility. "Manure storage facility" does not include
20 equipment used to apply manure to land.

21 (d) "Manure storage structure" means a manure storage impoundment made by
22 constructing embankments, excavating a pit or dugout, or fabricating a structure.

23 "Manure storage structure" does not include equipment used to apply manure to land.

1 (e) "Manure storage system" means a manure storage facility and related
2 practices needed for the environmentally safe storage of manure at that facility. A
3 "manure storage system" does not include any of the following:

- 4 1. A milking center waste control system.
- 5 2. Nutrient management as defined in s. ATCP 50.78(1).
- 6 3. A barnyard runoff control system as defined in s. ATCP 50.64(1).
- 7 4. Equipment used to apply manure to land.

8 (2) MANURE STORAGE SYSTEMS; ELIGIBLE COSTS. A cost-share grant under s.
9 ATCP 50.40 may reimburse any of the following costs related to a manure storage
10 system:

- 11 (a) Costs to design or construct the system.
- 12 (b) Costs to purchase and install permanent fencing needed to protect the system.
- 13 (c) Abandonment of the system if abandonment is required to meet water quality
14 objectives.

15 (d) Costs to repair, reconstruct or modify the system, or to abandon a related
16 well, if all of the following apply:

- 17 1. The action is needed to meet water quality objectives.
- 18 2. The remaining portions of the system are fully operational.
- 19 3. The landowner has made a substantial investment in the system, and will lose
20 that investment if the system is not repaired or modified.

21 (3) MANURE STORAGE SYSTEMS; INELIGIBLE COSTS. A cost-share grant under s.
22 ATCP 50.40 may not reimburse any of the following costs:

- 23 (a) Costs to design a manure storage system that is not installed.

1 (b) Costs to construct, modify or support a building. This paragraph does not
2 apply to a modification that is essential for the installation of a manure storage system, or
3 to the construction of a roof pursuant to s. ATCP 50.84.

4 (c) Costs for equipment used to apply manure to land, including manure
5 spreaders, portable pumps and other nonstationary equipment.

6 (d) Any manure storage system costs related to an animal feeding operation if all
7 of the manure from that operation could be applied to land according to the NRCS
8 technical guide nutrient management standard 590 dated March, 1999, without causing or
9 aggravating nonattainment of water quality standards.

10 **NOTE:** The feasibility of applying manure to land under par. (d) will be
11 determined in light of existing topographic, climatological and
12 management factors.

13 (e) Costs of removing or spreading manure from the system.

14 (f) Costs for more than one manure storage system for an animal feeding
15 operation.

16 (g) Costs for a manure storage system, to the extent that those costs exceed the
17 cost of an equally effective alternative.

18 (h) That portion of the system capacity needed to accommodate a significant
19 increase in the base livestock population size. If the landowner chooses a system with
20 additional capacity, the cost-share grant will be prorated based on the eligible capacity.

21 The following criteria shall be used in making the determinations under this paragraph, as
22 applicable:

23 1. The criteria used in s. NR 151.095(5)(d)2.d. to determine the size of the base
24 livestock population.

1 2. The criteria used in s. NR 151.095(5)(d)2.d. to determine significant increases
2 to the base livestock population.

3 3. The calculation used in s. NR 243.11(2) to measure animal units.

4 (i) A system capacity needed for a livestock population size for which a WPDES
5 permit application is required under s. NR 243.12(1)(a) or (b). The size of the livestock
6 population shall be measured in animal units according to s. NR 243.11(2).

7 (4) MANURE STORAGE SYSTEMS; GRANT DISQUALIFICATION. A county land
8 conservation committee may not award a cost-share grant for a manure storage system if
9 any of the following apply:

10 (a) The landowner intentionally aggravated a pollution discharge from the animal
11 feeding operation.

12 (b) The landowner could prevent the discharge of pollutants through improved
13 management practices at nominal cost.

14 (c) The manure storage system will not achieve compliance with applicable state
15 and local regulations.

16 (d) The landowner holds, or is required to apply for, a Wisconsin pollution
17 discharge elimination system permit for the animal feeding operation under s. 283.31,
18 Stats.

19 (e) The landowner could have prevented the discharge of pollutants by
20 complying with an operations and maintenance plan previously agreed upon by the
21 landowner and one of the following:

22 1. The department.

23 2. The county land conservation committee.

1 3. DNR.

2 4. NRCS.

3 (5) MANURE STORAGE SYSTEMS; DESIGN, CONSTRUCTION AND MAINTENANCE. A

4 cost-share grant under s. ATCP 50.40 may not reimburse any costs related to a manure

5 storage system unless all of the following conditions are met:

6 (a) The system capacity is necessary to store the manure produced by the animal

7 feeding operation over a normal period of 30 to 365 days, as verified by a nutrient

8 management plan or an operation and maintenance plan.

9 (b) The system complies with well location requirements under s. NR 812.08.

10 (c) If the manure storage facility is designed to be emptied annually or semi-

11 annually, manure from the system is incorporated into the soil within 3 days after it is

12 applied to land.

13 (d) No manure from the system is applied to frozen or saturated ground.

14 (e) The system complies with all of the following that apply:

15 1. NRCS technical guide waste storage facility standard 313.

16 2. NRCS technical guide manure transfer standard 634.

17 3. NRCS technical guide well decommissioning standard 351.

18 4. NRCS technical guide fencing standard 382.

19 5. NRCS technical guide heavy use area protection standard 561.

20 6. Other standards specified by the department.

21 (f) The landowner establishes a nutrient management plan, and agrees to comply

22 with that plan and maintain the manure storage system for 10 years unless the animal

23 feeding operation is discontinued.

1 **ATCP 50.63 Manure storage system closure. (1) DEFINITIONS.** In this

2 section:

3 (a) "Manure storage system" has the meaning given in s. ATCP 50.62(1)(e).

4 (b) "Manure storage system closure" means permanently disabling and sealing a
5 leaking or improperly sited manure storage system.

6 (2) **COST-SHARE ELIGIBILITY.** A cost-share grant under s. ATCP 50.40 may
7 reimburse costs to close a manure storage system if any of the following conditions exist:

8 (a) Groundwater enters the manure storage system.

9 (b) The manure storage system is in contact with or intercepts bedrock.

10 (c) Manure has been discharged into surface or groundwater as a result of an
11 irreparable structural failure in the manure storage system.

12 (d) The county land conservation committee finds that continued use of the
13 manure storage system is likely to result in resource degradation.

14 (3) **ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse any
15 of the following costs related to the closure of a manure storage system:

16 (a) Costs to design and remove any constructed soil liner, concrete liner or
17 membrane liner.

18 (b) Costs to remove and dispose of soil saturated with manure.

19 (c) Costs for filling, shaping and seeding the site to provide surface drainage
20 away from the closed site.

21 (d) Costs to remove a manure transfer system, if any.

1 (4) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not
2 reimburse the costs of removing or spreading manure that can be removed using
3 conventional equipment and routine agricultural practices.

4 (5) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s.
5 ATCP 50.40 may not reimburse any costs related to the closure of a manure storage
6 system unless the closure plan complies with NRCS closure of waste impoundments
7 standard 360.

8 **ATCP 50.64 Barnyard runoff control systems.** (1) DEFINITION. In this
9 section, "barnyard runoff control system" means a system of facilities or practices used to
10 contain, divert, retard, treat or otherwise control the discharge of runoff from outdoor
11 areas of concentrated livestock activity. A "barnyard runoff control system" may include
12 any of the following components which is necessary to contain, divert, retard, treat or
13 control surface water runoff:

14 (a) Access roads or cattle crossings under s. ATCP 50.65.

15 (b) Animal trails and walkways under s. ATCP 50.66.

16 (c) Critical area stabilization under s. ATCP 50.69.

17 (d) Diversions under s. ATCP 50.70.

18 (e) Heavy use area protection under s. ATCP 50.74.

19 (f) Prescribed grazing under s. ATCP 50.80.

20 (g) Waterway systems under s. ATCP 50.96.

21 (h) Livestock fencing under s. ATCP 50.75.

22 (i) Livestock watering facilities under s. ATCP 50.76.

1 (j) Manure storage systems under s. ATCP 50.62 that are needed to collect and
2 contain barnyard runoff.

3 (k) Nutrient management under s. ATCP 50.78.

4 (L) Relocating or abandoning animal feeding operations under s. ATCP 50.81.

5 (m) Roofs under s. ATCP 50.84.

6 (n) Roof runoff systems under s. ATCP 50.85.

7 (o) Sediment basins under s. ATCP 50.86.

8 (p) Streambank and shoreline protection under s. ATCP 50.88.

9 (q) Subsurface drains under s. ATCP 50.90.

10 (r) Underground outlets under s. ATCP 50.92.

11 (s) Waste transfer systems under s. ATCP 50.93.

12 (t) Waste water treatment strip under s. ATCP 50.94.

13 (u) Water and sediment control basins under s. ATCP 50.95.

14 (v) Well decommissioning under s. ATCP 50.97.

15 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse any
16 of the following costs related to a barnyard runoff control system:

17 (a) Costs for system components under sub. (1) that are eligible for
18 reimbursement under this subchapter.

19 (b) Costs to establish permanent vegetative cover, or to provide temporary cover
20 pending the establishment of permanent cover. This may include costs for mulch,
21 fertilizer, seed and other necessary materials.

22 (c) Costs for modification of a building that is essential for installation of the
23 barnyard runoff control system, or for construction of a roof pursuant to s. ATCP 50.84.

- 1 (3) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not
2 reimburse any of the following costs:
- 3 (a) Costs to design a barnyard runoff control system that is not installed.
 - 4 (b) Costs to construct a building.
 - 5 (c) Costs for equipment used to apply manure to land.
 - 6 (d) Costs of a proposed practice, to the extent that those costs exceed the cost of
7 an equally effective alternative.
 - 8 (e) Costs ineligible under s. ATCP 50.62(3)(g) or (h).

9 (4) BARNYARD RUNOFF CONTROL SYSTEMS; GRANT DISQUALIFICATION. A county
10 land conservation committee may not award a cost-share grant for a barnyard runoff
11 control system if any of the following apply:

- 12 (a) The landowner intentionally aggravated a pollution discharge from the animal
13 feeding operation.
- 14 (b) The landowner could prevent the discharge of pollutants through improved
15 management practices at nominal cost.
- 16 (c) The barnyard runoff control system will not be adequate to achieve
17 compliance with applicable state and local regulations.
- 18 (d) The landowner holds, or is required to apply for, a Wisconsin pollution
19 discharge elimination system permit for the animal feeding operation under s. 283.31,
20 Stats.
- 21 (e) The landowner could have prevented the discharge of pollutants by
22 complying with an operations and maintenance plan previously agreed upon by the
23 landowner and one of the following:

- 1 1. The department.
- 2 2. The county land conservation committee.
- 3 3. DNR.
- 4 4. NRCS.

5 (5) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant may not
6 reimburse any costs for a barnyard runoff control system unless all of the following
7 conditions are met:

8 (a) The system complies with applicable design, construction and maintenance
9 standards under this subchapter.

10 (b) The landowner agrees to maintain the barnyard runoff control system, and the
11 nutrient management plan if required, for 10 years unless the animal feeding operation is
12 discontinued.

13 **NOTE:** A barnyard runoff control system may include one or more of the
14 practices listed in this section. Standards for the listed practices are
15 contained in other sections of this subchapter. Any of the listed practices
16 may also be cost-shared in a project which is not a barnyard runoff control
17 project.

18
19 **ATCP 50.65 Access roads and cattle crossings. (1) DEFINITION.** In this
20 section, "access road or cattle crossing" means a road or pathway which confines or
21 directs the movement of livestock or farm equipment, and which is designed and installed
22 to control surface water runoff, to protect an installed practice, to control livestock access
23 to a stream or waterway, to stabilize a stream crossing, or to prevent erosion.

24 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse the
25 cost of establishing an access road or cattle crossing if the access road or cattle crossing is
26 needed to comply with applicable state or local regulations.

1 (3) DESIGN, CONSTRUCTION AND MAINTENANCE STANDARDS: A cost-share grant
2 under s. ATCP 50.40 may not reimburse the cost of establishing an access road or cattle
3 crossing unless all of the following conditions are met:

4 (a) The access road or cattle crossing complies with all of the following that
5 apply:

- 6 1. NRCS technical guide access road standard 560.
- 7 2. NRCS technical guide streambank and shoreline protection standard 580.
- 8 3. NRCS technical guide fencing standard 382.

9 (b) The landowner agrees to maintain the access road or cattle crossing for 10
10 years unless farming operations on the affected land are discontinued.

11 **ATCP 50.66 Animal trails and walkways.** (1) DEFINITION. In this section,
12 “animal trail or walkway” means a travel lane to facilitate movement of livestock.

13 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse the
14 cost of establishing an animal trail or walkway when necessary to comply with state or
15 local regulations.

16 (3) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s.
17 ATCP 50.40 may not reimburse the cost of establishing an animal trail or walkway unless
18 all of the following conditions are met:

19 (a) The animal trail or walkway complies with all of the following that apply:

- 20 1. NRCS technical guide animal trails and walkways standard 575.
- 21 2. NRCS technical guide streambank and shoreline protection standard 580.
- 22 3. NRCS technical guide fencing standard 382.

1 (b) The landowner agrees to maintain the animal trail or walkway for 10 years
2 unless farming operations on the affected land are discontinued.

3 **ATCP 50.67 Contour farming.** (1) DEFINITION. In this section, "contour
4 farming" means plowing, preparing, planting and cultivating sloping land on the contour
5 and along established grades of terraces or diversions.

6 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse
7 costs to establish a contour farming system, including necessary costs to remove
8 obstacles.

9 (3) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s.
10 ATCP 50.40 may not reimburse contour farming costs unless the contour farming system
11 meets the following applicable standards:

12 (a) NRCS technical guide contour farming standard 330.

13 (b) NRCS technical guide obstruction removal standard 500.

14 (c) NRCS technical guide standard wildlife upland habitat management standard
15 645, if habitat management is used to mitigate the loss of habitat resulting from the
16 installation of contour farming.

17 **ATCP 50.68 Cover and green manure crop.** (1) DEFINITION. In this section,
18 "cropland cover" means close-growing grasses, legumes or small grain grown for any of
19 the following purposes:

20 (a) To control erosion during periods when major crops do not furnish adequate
21 cover.

22 (b) To add organic matter to the soil.

23 (c) To improve soil infiltration, aeration or tilth.

1 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse
2 costs to establish cropland cover on a field that contributes to water quality degradation
3 when crop harvesting during the growing season leaves the field without enough residue
4 to provide adequate surface runoff protection.

5 (3) INELIGIBLE COSTS. A county land conservation committee may not, without
6 prior department approval, provide cost-share grants under this section and s. ATCP
7 50.82 for the same acreage for the same year.

8 (4) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s.
9 ATCP 50.40 may not reimburse any costs to establish cropland cover unless all of the
10 following apply:

11 (a) The cropland cover meets NRCS technical guide cover and green manure
12 crop standard 340.

13 (b) The landowner agrees to maintain the cover and green manure crop in each
14 cropping season for which cost-sharing is provided.

15 **ATCP 50.69 Critical area stabilization.** (1) DEFINITION. In this section,
16 “critical area stabilization” means planting suitable vegetation on erodible areas such as
17 steep slopes, gullies and roadsides, so as to reduce soil erosion or pollution from
18 agricultural nonpoint sources. “Critical area stabilization” may also include treating areas
19 that drain into bedrock crevices, openings or sinkholes.

20 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse the
21 following critical area stabilization costs:

22 (a) Costs to purchase and install permanent fencing around the critical area.

1 (b) Costs to establish permanent vegetative cover, or to provide temporary cover
2 until permanent cover is established. This may include costs for mulch, fertilizer and
3 other necessary materials.

4 (c) Preparatory shaping and smoothing operations.

5 (3) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not
6 reimburse for the costs of planting trees intended for commercial harvest.

7 (4) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s.
8 ATCP 50.40 may not reimburse critical area stabilization costs unless all of the following
9 conditions are met:

10 (a) The critical area stabilization complies with all of the following that apply:

11 1. NRCS technical guide critical area planting standard 342.

12 2. NRCS technical guide fencing standard 382.

13 3. NRCS technical guide field border standard 386.

14 4. NRCS technical guide livestock exclusion standard 472.

15 5. NRCS technical guide mulching standard 484.

16 6. NRCS technical guide tree and shrub establishment standard 612.

17 7. NRCS technical guide sinkhole treatment standard 725.

18 (b) The landowner agrees to maintain the critical area stabilization practice for 10
19 years unless farming operations on the affected land are discontinued.

20 **ATCP 50.70 Diversions.** (1) DEFINITION. In this section, "diversion" means a
21 structure installed to divert excess surface runoff water to an area where it can be used,
22 transported or discharged without causing excessive soil erosion. "Diversion" includes a

1 channel with a supporting earthen ridge on the lower side, installed across the slope with
2 a self-discharging and non-erosive gradient.

3 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse any
4 of the following costs to establish a diversion system:

5 (a) Costs to install a diversion, outlet, dike or subsurface drain. Costs to install a
6 subsurface drain may be reimbursed only if the drain is installed on sloping land where
7 groundwater seeps to the surface and causes the land or land cover to lose its stability.

8 (b) Costs to install pipes, underground outlets, or other structures needed to
9 deliver water to a ditch or dike, to promote a more even flow of water, or to protect
10 outlets from erosion.

11 (c) Costs for leveling and filling needed to install an effective diversion system.

12 (d) Costs to remove obstructions, if necessary for the installation of an effective
13 diversion system.

14 (e) Costs to establish permanent vegetative cover, or to provide temporary cover
15 until permanent cover is established. This may include costs for mulch, fertilizer and
16 other necessary materials.

17 (f) Fencing needed to protect a diversion from livestock.

18 (3) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not be used
19 to install ditches or dikes that are designed to drain or impound water for later use, or that
20 will be a part of a regular irrigation system.

21 (4) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s.
22 ATCP 50.40 may not reimburse any costs to establish a diversion system unless all of the
23 following conditions are met: